UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/50/390
29 August 1995
ENGLISH
ORIGINAL: ENGLISH/FRENCH/
SPANISH

Fiftieth session
Item 106 of the provisional agenda*

RIGHT OF PEOPLES TO SELF-DETERMINATION

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 49/150 of 23 December 1994, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

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Annex

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights

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I. INTRODUCTION

1. The General Assembly, in its resolution 49/150 of 23 December 1994, inter alia, reaffirmed that the use of mercenaries and their recruitment, financing and training are causes of grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. The Assembly urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure by legislative measures that their territory and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries or for the planning of activities designed to destabilize or overthrow the Government of any State, threaten the territorial integrity of sovereign States or fight the national liberation movements struggling against colonial domination and foreign intervention or occupation.

2. The General Assembly called upon all States that had not yet done so to consider taking early action to sign or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and urged all States to cooperate with the Special Rapporteur in the fulfilment of his mandate. The Assembly took note of the report of the Special Rapporteur (A/49/362, annex) and in particular the concern expressed therein at the continuation of mercenary-related activities despite Assembly resolution 48/92, and requested him to submit a report with specific recommendations to the Assembly at its fiftieth session on the new elements identified in the use of mercenaries.

3. Pursuant to the provisions of the resolution, the Special Rapporteur has the honour to submit to the General Assembly for consideration his report on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The report has been drawn up in accordance with the limit on the number of pages established, for reasons of austerity, for reports to the Assembly.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

4. The Special Rapporteur visited the Republic of Croatia on an official mission from 13 to 18 September 1994. He subsequently also visited the Federal Republic of Yugoslavia (Serbia and Montenegro) on an official mission from 19 to 23 September 1994. An account of both visits is contained in chapter IV of the report submitted to the Commission on Human Rights at its fifty-first session. 1/

5. The Special Rapporteur submitted his report to the Third Committee of the General Assembly on 11 October 1994. He subsequently travelled to Geneva on 30 January 1995 in order to submit his report 1/ to the Commission on Human Rights, which he introduced on 1 February 1995 at the 5th meeting of the fifty-first session. During his stay in Geneva, the Special Rapporteur held

consultations with representatives of a number of States and met with members of non-governmental organizations. He also held coordination meetings with the Centre for Human Rights.

6. The Special Rapporteur returned to Geneva on two occasions, from 29 May to 2 June 1995 and from 31 July to 4 August 1995 in order to conduct a number of consultations, participate in the meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights, which took place from 29 to 31 May 1995, and in order to draft this report, respectively.

B. Correspondence

7. Pursuant to the provisions of General Assembly resolution 49/150 of 23 December 1994 and Commission on Human Rights resolution 1995/5 of 17 February 1995, the Special Rapporteur sent a communication dated 8 May 1995 to all States Members of the Organization, requesting the following information:

(a) Information relating to the possible existence of activities of mercenaries which, in violation of the sovereignty and laws of their countries, might have occurred or be occurring in their territory (recruitment, financing, training, assembly, transit or use of mercenaries);

(b) Information relating to the possible existence of activities of mercenaries in the territory of another country which impair or may impair the sovereignty of their State and the exercise of the right of their people to self-determination;

(c) Information relating to the possible existence of activities of mercenaries in their territory or in the territory of another State which are associated with the performance of illegal international acts such as terrorist attacks, drug and arms trafficking, smuggling and other activities which impair the constitutional stability of their Governments and the enjoyment of human rights by their population;

(d) Information relating to the possible existence of activities of mercenaries in the territory of another country which impair or may impair the sovereignty of other countries in their subregion, region or continent and the exercise of the right of other peoples to self-determination;

(e) Information on domestic legislation currently in force and international treaties to which their country is party relating to the prohibition of activities of mercenaries and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination;

(f) Their Government's position on the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989; and

(g) Suggestions which, in their Government's opinion, might be useful in refining the international approach to the subject of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

8. The reports received by the Special Rapporteur relating to the alleged use of mercenaries in the Armenian-Azerbaijani conflict in the territory of Nagorno-Karabakh were conveyed to the Government of Azerbaijan in a letter dated 26 July 1993, and to the Government of Armenia in a letter dated 28 July 1993. The reply of the Government of Azerbaijan is contained in the Special Rapporteur's previous report to the General Assembly (A/49/362, annex, paras. 69-71). On 21 December 1994, Mr. Vartan Oskanian, Deputy Minister for Foreign Affairs of the Republic of Armenia, sent a letter to the Special Rapporteur which is reproduced in the addendum to this report.

9. In its letter of 3 January 1995, the Permanent Mission of Sri Lanka to the United Nations Office at Geneva supplied the following relevant information from its Government:

> "Sri Lanka firmly opposes the use of force and any attempts to destabilize or overthrow legitimate Governments whether through the use of mercenaries and assorted terrorist groups or by any other means. Equally we oppose the use of mercenaries against genuine national liberation movements such as those ranged against apartheid and racism.
>
> "Within the context of the South Asian Association for Regional Cooperation (SAARC), the regional Convention on Suppression of Terrorism has been in effect since August 1988. This Convention provides an effective legal framework for the countries of the region to cooperate with one another in combating acts of terrorism, such as the act against Maldives, which affect the security and stability of the region as well. The Convention requires States to respect the sovereignty and territorial integrity of each other and to prevent their territories from being used for the perpetration of terrorist acts against another State. It imposes a fundamental legal obligation on States to either extradite or prosecute terrorist offenders.
>
> "Though not directly and specifically concerned with the use of mercenaries, the SAARC Convention has thus clear provisions to tackle the root cause of mercenarism and the training and arming of mercenaries and could help in the prevention of threats to the sovereignty, independence and territorial integrity of States in the region.
>
> "Sri Lanka is in the process of studying the question of becoming a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries."

10. Mr. Roberto Robaina González, Minister for Foreign Affairs of Cuba, sent a letter to the Special Rapporteur dated 3 January 1995, which states the following:

"The use, recruitment, financing and training of mercenaries are crimes which deeply concern all States in that they violate the fundamental principles of international law, such as non-interference in the internal affairs of States, territorial integrity and independence, and they impede the process of the self-determination of peoples struggling against colonialism and all forms of foreign domination and occupation. The activities of mercenaries constitute a flagrant violation of fundamental and inalienable human rights.

"In his report to the forty-ninth session of the General Assembly (A/49/362, annex), the Special Rapporteur presented an in-depth analysis of the causes and consequences of current mercenary practices in various parts of the world, and of the increasingly apparent connection between the activities of mercenaries and those of terrorists; he also formulated recommendations which should be endorsed by the international community in order to put a stop to these activities. This report reaffirms the need for the Commission on Human Rights to continue examining this topic, for the Special Rapporteur to study the phenomenon even more thoroughly, and for States to continue reporting instances of mercenary activity whenever they occur.

"The Government of the Republic of Cuba adds its voice to those Governments which advocate outlawing the use, recruitment, financing and training of mercenaries, and the operations which they undertake, as being a flagrant violation of the sovereign rights of States and of the exercise of the right of peoples to self-determination, and a crime against fundamental human rights and freedoms. In this spirit, Cuba has sponsored appropriate resolutions on this topic in both the General Assembly and the Commission on Human Rights, and it has supported the Special Rapporteur's excellent work.

"In addition, it is worth reiterating that article 119 of the Cuban Penal Code describes mercenary activity as a crime repudiated by the moral sense of international law.

"The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989, is one of the international instruments currently being studied by the competent Cuban authorities.

"In its replies on previous occasions with regard to this topic, in particular its reply of 8 June 1993, the Government of the Republic of Cuba has reported the mercenary and terrorist operations undertaken against our country by mercenary groups financed and trained in the territory of the United States of America; these operations aim to overthrow the Cuban revolution and wipe out the social achievements won over the past years.

"In 1994, these mercenary operations continued to be waged against Cuba, the most recent being an attempted infiltration of the north coast of the country, in the Caibarién region, by three fully armed mercenaries whose aim was to commit terrorist acts in an attempt to undermine the

social order of the country and overthrow the legitimately established Government of Cuba.

"José Marcelo García Rubalcava, a Mexican citizen residing in the state of California, United States of America, was arrested in Havana in September 1993; he intended to smuggle into the country two tear-gas hand grenades and propaganda material for a terrorist group calling itself 'Alpha 66', which advocated taking tourists visiting Cuba as hostages. Subsequently, Andrés Nazario Sargent, the head of this terrorist group, made a statement to the El Nuevo Herald in which he said that members of 'Alpha 66', after infiltrating the island, had pledged to carry out 'acts of violence, attacks, sabotage and other operations' at beaches, hotels and other tourist areas with the aim of frightening tourists away from Cuba.

"A similar threat was received in October 1993 from members of the group 'Campaign for the Freedom to Travel', which demands the right of every United States citizen to travel freely in any country with which the United States is not at war.

"It is the frightening impunity with which terrorist groups such as 'Alpha 66', 'Comando L', 'Brigada 2506', 'PUND' and the self-styled 'Comandos F-4' organize and prepare their armed aggression against Cuba from the south of Florida, United States of America, which constitutes a flagrant violation of fundamental human rights."

11. By its note verbale dated 29 June 1995, the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva transmitted the following reply from its Government to the Special Rapporteur's request for information:

"The recruitment of mercenaries in the United Kingdom is always deplorable and in some cases unlawful. The Foreign Enlistment Act of 1870 prohibits the recruitment of persons to serve with the forces of a foreign State at war with another foreign State which is at peace with the United Kingdom. Moreover, if any evidence came to light that British citizens recruited as mercenaries were engaged in illegal activities themselves, that evidence would be referred to the prosecuting authorities.

"The British Government has no plans to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries."

12. The Special Rapporteur also received replies from the Governments of Ecuador (1 June 1995), Laos (8 June 1995), Latvia (29 May 1995), Mexico (11 July 1995), Myanmar (24 July 1995), Namibia (22 June 1995), Palau (3 July 1995), San Marino (31 May 1995), and Uruguay (6 June 1995).

13. The communications from the Governments of Ecuador, Mexico and Uruguay referred, inter alia, to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Uruguay also described those provisions of its domestic legislation which could be applicable to the suppression of mercenary activities.

14. Deputy Prime Minister and Minister for Foreign Affairs Mate Granić of Croatia sent a letter dated 30 June 1995 to the Special Rapporteur; it is reproduced in the addendum to this report.

15. By its communication of 14 July 1995, the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva transmitted information regarding the presence and use of mercenaries in the territory of the former Yugoslavia. That information is reproduced in the addendum to this report.

III. LOCATION OF MERCENARY ACTIVITIES

16. Throughout its 50-year history, the United Nations has endeavoured to bring about the realization of two of the primary purposes of the Organization, namely, to maintain peace and to provide collective security to the peoples of the world. Recognition of this effort is the greatest tribute that could be made to the fiftieth anniversary of the United Nations now being celebrated. Without the United Nations, the world would probably have suffered even greater conflicts and situations of considerable danger to humankind. This is all the more likely in light of the fact that, despite the Organization's efforts to achieve peace and universal respect for human rights, situations of conflict and many instances of violence do indeed continue to exist, with consequences detrimental to peace in certain countries or regions, to the sovereignty of States and to the stability of constitutional Governments. Such abnormal situations have included violations of fundamental rights, such as the right to life and freedom, the physical integrity of persons and the rights of peoples. The numerous armed conflicts which have arisen during the second half of the twentieth century have entailed massive violations of human rights. Some of them are still taking place. So many millions have been killed or maimed, or are missing, refugees, internally displaced or orphaned, that such conflicts, including so-called low-intensity wars, are thought to have made as many victims overall as the Second World War, as well as having seriously disrupted world peace. Ending armed conflicts is therefore one of the principal challenges facing the United Nations.

17. The numerous references to such situations in the Special Rapporteur's reports are due to the observed fact that, in most cases, there is a close connection between such conflicts, the way in which they come about and the somewhat evasive position generally taken by the States involved when mention is made of the use of mercenaries by one or all of the parties to a conflict. This should be borne in mind by United Nations organs, since the presence of mercenaries in armed conflicts tends to make them longer lasting, more serious and bloodier. Admittedly, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries has not yet come into force, but none the less it seems that, despite the provisions of article 47 of the 1977 Additional Protocol I to the Geneva Conventions of 1949, mercenaries are very actively involved in armed conflicts and are responsible for their most violent and cruel aspects.

18. This statement is neither gratuitous nor exaggerated; it is based upon proven incidents in a number of armed conflicts. Mercenaries exist, and they

are not a small number of individuals; they are groups of professionals selling their skill in war and violence; they are also criminal organizations, and represent an international blight devoted to perpetrating acts of violence which ruin human lives, create material losses and hamper economic activity. They also carry out terrorist attacks which more than once have touched off or aggravated conflicts, with catastrophic results for the peoples affected by them. In the exaggeration of everyday language, many acts or forms of behaviour are erroneously referred to as mercenary; but this misuse of the term, usually found in political propaganda in an attempt to discredit an adversary, and also frequent in the sensationalist press, should not, at the other extreme, lead to a denial of the duly verified presence of mercenary activities or of the existence of international standards, United Nations resolutions and declarations whose purpose is to define a type of human behaviour as mercenary and to condemn it accordingly. Any inadequacy or discrepancy in the interpretation of the existing rules should be invoked, not as justifying mercenary acts and behaviour, but as calling for increased clarification, precision and refinement of the standards of national and international law to combat the activities of mercenaries.

19. Mercenaries generally deny that this is what they are, claiming altruistic, ethnic, ideological or religious motives in order to disguise the true nature, according to international law, of their role. In reality, these arguments are applicable in the case of volunteers, an internationally accepted category, but cannot properly be invoked by a mercenary. Ideological factors, the concept of the "professional soldier" and psychological fixations may play a part in his personal make-up, but in concrete terms, it is all a question of money, pay and lack of scruples, which add up to the hallmark of the mercenary.

20. Mercenary activity is paid. Hired mercenaries attack and kill for financial gain, in a country or conflict which is alien to their own nationality. The historical record, the complaints which have been submitted and the cases of mercenary activity which have been analysed by the Special Rapporteur show that the mercenary is an expert in warfare and in the illicit or even criminal activities for which he is hired and receives a considerable sum of money. He usually adopts ideologies which are extremist, radical, and distinctly intolerant, but he commits criminal acts against the most basic rights of persons and of peoples because he is directly motivated by financial gain.

A. Armed conflicts and mercenary activities

21. Situations of armed conflict, wherever they may occur, undermine peace and should be avoided. The armed conflicts that have taken place during the second half of the twentieth century have been among the main concerns of the United Nations, since they are in contradiction with the Organization's mission of maintaining peace and with the basic principle of international relations which it stands for, that is, friendship and cooperation among States and refraining from the threat or use of force. In addition, armed conflicts threaten the political stability of constitutional Governments and inflict serious damage on the economies of the countries concerned; they lead to recession and poverty, and are generally accompanied by massive human rights violations.

22. The phenomenon of mercenary activity is most clearly apparent in the context of armed conflict. It has been noted that, in situations of armed conflict, professional soldiers whose job situation has deteriorated or fails to meet their expectations in terms of income may consider and accept proposals that turn them into mercenaries. Today, it is impossible to deny the existence of private entities and public bodies which, under a legal cover, conduct clandestine criminal operations as a parallel activity by hiring people who, in exchange for payment, agree to participate in the commission of unconscionable and illegal acts.

23. Although involvement in armed conflict is the best known form of mercenary activity, it would be a mistake to believe that the latter is confined to such situations. In fact, this illicit activity takes a variety of forms. For example, a mercenary may lend his services for the perpetration of criminal acts on behalf of a particular Power or group that wishes to cause damage in another country while using the person recruited to cover its tracks. There have also been infamous cases in which State intelligence authorities or security forces, opposition groups, armed domestic resistance movements or criminal organizations hire mercenaries to engage in illegal actions such as forming paramilitary forces for purposes of repression, organizing death squads or providing military protection for illicit drug trafficking, smuggling or arms trafficking.

24. In the above context, the mercenary, regardless of his nationality, generally offers his services or is available for contact. Organizations that recruit such persons work with government agents or with groups that are parties to a conflict, making the necessary connections and helping to establish a criminal alliance between recruiter and recruit. In some cases, legal devices are used to conceal the nature of the assignment or to make the mercenary appear to be a national of the country in whose armed conflict he is involved. Although the use of such a device conceals the mercenary's real status, information such as the origin of the contractual relationship, the payment, the type of services agreed upon and the simultaneous use of other nationalities and passports, may serve as evidence in establishing the true nationality of persons involved in an armed conflict who are justifiably suspected of being mercenaries.

25. Even though mercenaries are used on a massive scale today in various armed conflicts, owing to the objective increase in the supply of this type of activity, the recent re-emergence of the mercenary took place in conflicts that arose when colonized peoples decided to exercise their right to self-determination. Beginning in the 1960s, during the decolonization of Africa, the active presence of bands of mercenaries constituted a resource for the colonial interests that wished to remain in the region, hindering the process of self-determination from which new African States were emerging or giving rise to situations of destabilization and war in which the mercenary ingredient played a primary role in intensifying and internationalizing the armed conflict. Today, mercenary activities are associated not with a particular continent but with the existence of armed conflicts and of State or private forces all over the world which do not hesitate to use this instrument to achieve specific criminal aims.

26. Generally speaking, mercenaries are former soldiers who compulsively identify with the job of making war, pretend to be fanatical practitioners of a given ideological option and are usually intrinsically intolerant or violent. However, the aggravating factor is that their participation is linked to the bloodiest aspects of a conflict and to the worst crimes against human rights. Moreover, the financial considerations and desire for illicit gain through looting which are associated with their participation may be decisive in prolonging the conflict. The mercenary's interest lies not in peace and reconciliation but in war, since that is his business and his livelihood. This is why, when wars end or become scarce, mercenaries tend to involve themselves in other illegal activities.

27. The Special Rapporteur's previous reports have referred to foreign mercenaries involved in actions to destabilize constitutional Governments or in drug or arms trafficking. Although these reports do not claim to establish a classification of mercenary activities, it is important to take into account the wide range of situations in which this phenomenon is observed, since it affects the sovereignty, self-determination, stability and security of States, as well as the human rights of their inhabitants.

28. The activities normally assigned to mercenaries may be carried out by nationals in their own country or by foreigners who live in a country without having changed their original nationality and legally acquired another. A point at issue is whether these illicit activities, which can do serious harm to a country or Government, should be considered mercenary if recruitment, training and payment are involved. Currently, despite these factors, cases such as these are not considered to involve mercenary activities as such, but acts that can be prosecuted as ordinary offences under the relevant domestic legislation. According to international provisions on the question, foreign nationality is a prerequisite for classifying an offender as a mercenary. In any case, the possibility of changing this criterion should be analysed and debated with a view to revising current international provisions on the subject, in the light of experiences where nationality has been used to mask the mercenary nature of illicit activities engaged in by a Power that recruits, prepares and pays an individual to perpetrate a criminal act against another country, its Government, its property or a given sector of its population.

29. According to this criterion, an irregular armed group engaging in terrorism may easily become a mercenary group by travelling to the territory of a neighbouring State in order to cover and give protection to a gang of drug traffickers, or to occupy a portion of foreign territory, removing it from the authority of the sovereign State. Situations such as these have been observed in recent decades. Likewise, there may be cases in which paid assassins or gangs of criminals are hired to commit crimes outside the territory of the State whose government agents recruit them to act against its own nationals, but cannot be classified as mercenaries under the legislation of the country in which the crimes are committed. However, this would not prevent the act of the recruiters from being classified as illegal payment of mercenaries to perpetrate acts which are prohibited and punishable under international law.

B. Cooperation among States in preventing mercenary activities

30. This section presents information and analyses that may serve as a basis for formulating policies to prevent and combat mercenary activities.

31. The first observation that can be made on the basis of studies of the issue is that mercenary activity is a recurrent phenomenon that can arise anywhere in the world in the context of an existing armed conflict or for the purpose of causing one. Mercenaries may also be present in the absence of armed conflict, in connection with the perpetration of attacks that cause material damage or affect the lives of individuals, or that destabilize the Government of a particular country. While mercenaries are typically present in situations of armed conflict, it would be incorrect to limit the description to those cases alone, since it applies to any situation in which the sovereignty of States, the self-determination of peoples, political stability and the human rights of populations are affected in a premeditated fashion by operations in which the active agent is a foreign mercenary specially hired to carry out unlawful criminal acts.

32. While it is true that a number of African countries have suffered most from the criminal action of mercenaries in recent decades, this should not lead to the erroneous conclusion that there are or have been mercenaries only in Africa. The facts show that any country can be the victim of mercenary action. Moreover, mercenaries come from a variety of countries; they are not organically linked to any State, although there are cases where temporary alliances are formed between intelligence agencies or government security forces which use mercenaries, or the organizations that recruit and train them, to carry out acts of sabotage and hostility against or within a third State. Such operations are usually secret and covered up to ensure that the Government which is really behind the attack cannot be held responsible for it.

33. Another issue is that there are situations where a legal vacuum or loophole permits the existence, in some countries, of legally registered associations which offer contracts freely to people who want to work as mercenaries, without the act of promoting, advertising or signing such a contract being regarded per se as illegal and subject to prosecution. In these cases, the legal loophole is that the law guarantees that the market may operate freely and that people may be recruited freely. The person who recruits a potential mercenary is simply an intermediary and is not committing an act that is illegal and criminal per se, since the mercenary will not necessarily receive money to commit a crime, the contract is signed in a place other than where the criminal action will occur and the country's laws do not classify mercenary activity in a separate category which automatically links the name of the mercenary and his signing of a contract with the commission of a formally defined offence. This situation calls for careful investigation and monitoring of market activities related to the recruitment of persons for unspecified services, which constitute a traffic that culminates in objective damage in a territory other than the one in which the contract was made and jeopardizes the sovereignty of a third State, peoples' lives, the economy and self-determination.

34. To prevent mercenary activities, States should consider, inter alia, the possibility of revoking the operating licences and permits of entities that have

hired mercenaries to engage in illegal activities, refusing passports and visas to mercenaries and prohibiting them from passing through the territory of other States.

35. Most mercenaries are former members of the regular armed forces of a country and, as such, have taken part in military conflicts. In other words, it is their job to make war and it is for this very reason that their services are sought. From this standpoint, the unemployment they face when they are repatriated and retired from the regular forces, as well as certain personality changes they have undergone as a result of warfare, may contribute to their becoming mercenaries. However, States could keep this dangerous extreme under control by agreeing on a policy of prevention of mercenary activities, involving the exchange of information and the provision of follow-up observation and care for these kinds of people who have developed a tendency towards aggressive behaviour. They could also implement a policy to promote employment and psycho-social care for people with problems resulting from their participation in warfare, and establish a legal framework for the activities of groups of former combatants to prevent them from going to extremes such as glorifying war, fostering intolerance or adopting ideologies which cultivate violence and military interventionism.

36. Certain illicit activities, such as trafficking in drugs, people and arms, smuggling and terrorism, are related to the recruitment of mercenaries. Such acts may occur either in connection with armed conflicts or independently of them. In both cases, it has been found that gangs engaging in these activities require a military component to serve on security missions, to move merchandise, to fly aircraft and, if the need arises, to fight the regular forces that are protecting the sovereignty of the State affected by these illicit acts. States therefore have an interest in preventing bands of mercenaries from assembling or operating within their territory by enacting laws that criminalize mercenary activities and taking legal action to suppress them. Where mercenaries are former members of the armed forces or the police, this should be considered an aggravating circumstance and the penalties should be more severe.

37. Furthermore, with a view to refining the topic, there must be no attempt to justify mercenaries in the media nor any misconceptions regarding this type of human behaviour. A mercenary is neither a hero nor the consummate romantic guerrilla, but a criminal whose acts are associated with the vilest crimes against life. The State and society must become aware of, prevent, punish and morally condemn mercenary activities. At the same time, national legislation must be very harsh on State services such as intelligence or security services, or authorities with repressive proclivities, or private totalitarian-minded associations which, resorting to markets where mercenaries are available, recruit individuals for the purpose of establishing praetorian guards, death squads or operational groups devoted to political repression or to the assassination of political, religious or other adversaries. Unfortunately, such things happen in today's world and are related to the presence of foreign mercenaries.

38. Despite the already complex nature of this phenomenon, situations arise which cannot be classified under the heading of what the present state of international law describes as mercenary activities. There is a tendency to use

the term extremely loosely in ordinary conversation about any adversary who is presumed to indulge in immoral conduct and be partial to ill-gotten gains. An examination of situations involving the right to sovereignty and self-determination reveals the existence of aspects that do not precisely fit the description of mercenary activities, although other factors can be observed, such as criminal behaviour, payment or involvement in a conflict on behalf of a third party. Using a hypothetical example, what is the status of a foreigner who enters a country and acquires its nationality to conceal the fact that he is a mercenary and acts for a third State or the other side in a domestic armed conflict? What steps should be taken against a person of dual nationality, one of which is that of the State against which he is acting, while he is being paid by the State of his other nationality or by a third party? What are the limits of jus sanguinis in an armed conflict when it is invoked by persons who are paid and sent to fight in a domestic or international armed conflict taking place in the country of their forebears?

39. A case-by-case analysis might well bring to light other situations, which in practice would re-open the discussion on the effectiveness of domestic and international instruments intended to prevent, classify and punish criminal acts in which the aggravating circumstance is that they were committed by an agent presumed to be a mercenary.

C. Mercenary activities in Africa

40. The issue of peace and respect for self-determination and human rights in Africa has been raised in the reports received by the Special Rapporteur, who considers it to be closely related to the rationale for his mandate. A number of African countries have suffered from the presence in their territory of mercenaries whose aim was to prevent or somehow modify the exercise of the right of peoples to self-determination, or to interfere by undermining the stability of constitutional Governments in the region.

41. In his reports, the Special Rapporteur has described in detail the situation of various countries which had suffered the extreme cruelty of mercenaries hired by third parties to undermine peace, security and political stability. Such was the case in Angola, Benin, Botswana, the Comoros, Lesotho, Mozambique, Namibia and Zimbabwe. In more than one case, the racist component and support for the apartheid system have been two characteristics of mercenary activities in these countries. For this reason, the Special Rapporteur's reports have also referred to the situation prevailing in South Africa, since it appears that a number of mercenary activities have been linked to efforts to strengthen and maintain apartheid and sponsored by officials of that regime.

42. The situation today, particularly with regard to southern Africa, has since changed substantially. In South Africa, the apartheid regime has been dismantled, and a multiracial, multi-party constitutional system is leading the country towards a consolidated and modern democracy. In Angola and Mozambique, the domestic armed conflicts have come to an end and peace processes initiated which are expected to lead to national reconciliation and lay the foundation for the transition to democracy. Reports of mercenary activities have ceased. The Special Rapporteur, in his most recent report to the Commission on Human

Rights, 1/ expressed his satisfaction at this positive development. In presenting this report to the General Assembly, he reiterated his support for and solidarity with the peace processes in Angola and Mozambique and with the consolidation of the democratic, constitutional regime established in South Africa. In this context, he reiterated the hope that the human rights and self-determination of those peoples might never again be disrupted by the activities of mercenaries.

43. Notwithstanding the progress noted in southern Africa, other regions in Africa continue to suffer from political instability accompanied by armed violence in which the mercenary component has been a constant. This has led the Special Rapporteur to turn his attention to situations such as that of Liberia, where the war has been raging for over five years, resulting in 150,000 mostly civilian deaths, and approximately 1.5 million refugees and displaced persons, and that of Sierra Leone. As is well known, the conflict in Liberia has extended into parts of neighbouring countries, while peace agreements, such as the one signed on 21 December 1994 in Ghana, have not yet fully materialized.

44. The Special Rapporteur also indicated his concern for other countries such as the Sudan and Zaire, where the breakdown in the respective political regimes has prolonged the domestic political violence and given rise to irregular situations, reportedly aggravated in many cases by the presence of mercenaries. As is known, in the case of Zaire, the Government of President Mobutu Sese Seko has resisted all attempts to regularize the political regime constitutionally and lay the foundations, based on consensus, for a democratic transitional period leading to the holding of general, multi-party elections. However, in addition, State security forces, including the Civil Guard, the Special Action Forces, and the National Intelligence and Protection Service, have been denounced on various occasions for the use of violent police methods, contrary to human rights. Many of these acts were carried out by the President's Special Division, formed and trained by foreign mercenaries, some of whom remain linked to that Guard to this day. In the case of the Sudan, the civil war affected the population's basic living conditions, while, in the south of the country, a guerrilla force has maintained resistance to the imposed regime since 1989 and whose intolerance has led it to perpetrate acts of violence against its opponents. The Special Rapporteur cannot remain silent about reports in the international press and complaints he has received personally during his work at the Centre for Human Rights in Geneva pointing to the operation of paramilitary training camps in some parts of the territory of the Sudan and the failure of government authorities to take steps to prevent them. The training is reportedly carried out in these camps by experienced foreign mercenaries, and some of those trainees would not be averse to acts of international terrorism.

45. To sum up, some African countries have continued to be affected in recent years by situations of political instability, almost always accompanied by armed violence. Special attention was devoted to the cases of Burundi and Rwanda, and United Nations missions were dispatched to those countries in view of the extreme gravity of the situation there. Cameroon, Chad, Djibouti, Niger and Togo were mentioned in previous reports of the Special Rapporteur. To these must be added the grave situation in Somalia, where the war between the clans and sub-clans has led to the institutional overthrow of the State; lastly, in Mali, despite the 1992 national peace agreement, clashes continue between

government forces and the Tuareg rebels, especially in the regions of Niafunké and Gao.

46. The above-mentioned conflicts infringe the human rights of the African peoples and impede development activities. The presence of mercenaries, where it is a factor, further increases these peoples' suffering. The international community should give further thought to the background and habitual course of the conflicts in Africa and support African efforts to secure rapid, effective agreements guaranteeing the right to self-determination, fundamental freedoms, democracy and development for all these peoples who, despite the attainment of independence some years ago, are unable to find peace with justice and development, mainly because of violence, foreign interests and armed conflicts.

IV. PRESENCE OF MERCENARIES IN THE TERRITORY OF THE FORMER YUGOSLAVIA

A. Armed conflicts in the former Yugoslavia and the presence of mercenaries

47. Since 1992 the Special Rapporteur has received information and reports concerning the serious consequences of the wars in the territory of the former Yugoslavia for the populations affected by the military confrontation. The content of the reports was similar to that of others reviewed by the Special Rapporteur on the situation of human rights in the former Yugoslavia and by the thematic rapporteurs of the Commission on Human Rights on the right to life and the physical integrity of persons, as well as by other United Nations organs and agencies that are attempting to devise a peaceful, just and lasting solution to the conflict and that are engaged in human rights or humanitarian relief activities.

48. In both the conflict that occurred in the territory of the Republic of Croatia in 1991 and the subsequent conflict in the Republic of Bosnia and Herzegovina, the Special Rapporteur was apprised of such serious incidents as indiscriminate bombardment of cities and civilian areas, murders of non-combatants, throat cuttings, heinous acts of torture, sexual assaults, serious instances of racism, ethnic cleansing operations, destruction of vital services, etc., all of which are in complete contravention of the most basic principles of human coexistence, respect for life and mutual tolerance. None of the armed bands and parties to the conflict can be spared responsibility for having authorized, and permitted, or, at the very least left unpunished, such atrocious crimes committed by individuals under their jurisdiction.

49. What made the Special Rapporteur consider these allegations in his reports was that they refer to foreigners and in particular to mercenaries as participants and principal authors of many of the atrocities committed. In fact the history of the conflicts, the investigations, the information and data provided by survivors, war correspondents, non-governmental organizations, etc., support the view that a significant number of foreigners have participated in the armed conflicts in the former Yugoslavia. With the exception of the recent agreement on military cooperation between the independent States of Croatia and of Bosnia and Herzegovina, there are no bilateral or multilateral agreements

between the countries of the region or with other countries that would explain the active presence of foreigners and members of foreign armies alongside one or all the parties to the conflicts.

50. This observation, plus the alarming information and reports concerning the influx and conduct of foreigners in connection with the armed conflicts, led the Special Rapporteur to deal with the issue repeatedly in his reports, to hold interviews with representatives of Slovenia, Croatia, Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro), and ultimately to travel to Croatia on a working visit from 13 to 18 September 1994 and to the Federal Republic of Yugoslavia (Serbia and Montenegro) for the same purpose from 19 to 23 September 1994. Subsequent to such visits the Special Rapporteur has continued to receive information and correspondence from both countries, enabling him to continue his investigations with a view to clarifying beyond all doubt the status of the foreigners in the former Yugoslavia and of classifying as mercenaries those that actually and manifestly are.

51. The Special Rapporteur outlined his visit in paragraphs 55 to 85 of his report to the Commission on Human Rights at its fifty-first session. 1/ That account records visits to the interior of the territories, the receipt of testimony, meetings with officials and civilians, the handing over of documentation, etc., allowing for a more direct and in-depth approach to the question as well as analysis and comparison of the reports of mercenary activities in the armed conflicts in the former Yugoslavia. Specifically, on the basis of the visit, observations and material received, the Special Rapporteur has requested more convincing documents in proof, and the holding of interviews with direct witnesses of the presence of mercenaries and with surviving victims of their activities, to pursue his clarification of the question. Nevertheless the Special Rapporteur reiterates his stated belief, as it appears at the current stage of his investigation, that a substantial number of the foreigners that have participated in the conflict cannot be classified as mercenaries, but fall into other categories, such as volunteers or nationals, by virtue of the timely and appropriate application under the law of the principle of jus sanguinis. In any event it is clear that a certain number of those who have been active both at the time of the former conflict in Croatian territory as well as subsequently in the territory of Bosnia and Herzegovina could be considered mercenaries, although those making allegations must provide supplementary information as requested by the Special Rapporteur to enable him to submit his final conclusions to the General Assembly.

B. Evaluation of the visits to the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)

52. The visits to the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) enabled the Special Rapporteur to achieve some progress in his investigations and to formulate the following preliminary views.

53. The presence of foreigners and alleged mercenaries in the 1991 war in Croatia and in the war in progress in Bosnia and Herzegovina since 1992 coincided with serious violations of international humanitarian law and the

human rights of the peoples affected, and psychological warfare played a fundamental role in the development of the armed conflict. An investigation is, however, needed to ascertain to what extent foreigners and mercenaries were assigned the task of perpetrating the worst kinds of war crimes and atrocities against local populations and whether their share of the responsibility is greater than that of nationals.

54. Foreigners have been involved in circumstances of questionable legality in the armed conflict which took place in Croatia in 1991 and in the current conflict in Bosnia and Herzegovina. This assertion must be qualified, however, by specifying in which cases these foreigners were mercenaries. In accordance with the present state of international law on the subject, persons sent by a State which is not a party to the conflict on official duty as members of its armed forces should not be classified as mercenaries.

55. Similarly foreigners who joined the armed forces of a State as regular and permanent members and received material compensation similar to that promised or paid to combatants of similar ranks and functions in those armed forces, and who are not motivated to take part in the hostilities essentially by the desire for private gain or material compensation, should not be classified as mercenaries. This means that volunteers should be excluded. Only persons motivated essentially by the desire for private gain to take part in hostilities and those who have, in fact, been promised material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of the party to the conflict can be considered to be mercenaries.

56. Only when a person is not a national of a party to the conflict or resident in a territory controlled by a party to the conflict is he a mercenary. Nationals and residents may not be regarded as mercenaries. A mercenary must be a non-resident alien.

57. The conditions that must be satisfied in order to classify a person as a mercenary set out in article 47 of Protocol I of the Geneva Conventions of 1949 and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries are cumulative and concurrent; this means that a person must satisfy all these conditions if he is to be classified as a mercenary. The Special Rapporteur is aware that these points are difficult to prove in practice and make it easy for the mercenary to elude such classification while the party victim of the aggression finds itself deprived of the right of punishment or legitimate reparation.

58. The granting of the nationality of a State after the event, even though based on the jus sanguinis criterion, does not alter a foreigner's status until the actual moment the new nationality is granted.

59. With respect to allegations concerning the presence of mercenaries in Croatia, foreigners who joined the regular Croatian army as normal and permanent members, receiving compensation equal to or less than that promised or paid to combatants of similar ranks and functions in that regular army, should not be classified as mercenaries. They were volunteers and not mercenaries. Mercenaries are persons who fight, motivated by the desire for private gain and, in fact, are promised material compensation substantially in excess of that

promised or paid to combatants of similar ranks and functions. Cases of foreigners who joined international brigades and the relationship between these brigades and the State's system of defence should be the subject of a special investigation. During his visit, the Special Rapporteur was informed by Croatian sources that soldiers of fortune had arrived in the country and had acted in an undesirable manner. In any event, it must be determined whether they received or were promised compensation, the amounts of such compensation and who promised or paid it to them.

60. Lastly, the question of the mujahidin, or Islamic combatants allegedly involved in the armed conflict in the Republic of Bosnia and Herzegovina, needs to be studied. In this case persons sent by States which are not parties to the conflict on official mission as officers or soldiers of their armed forces should be excluded. Foreigners who have joined the armed forces of Bosnia and Herzegovina as regular and permanent members, receiving material compensation equal to or less than that promised or paid to combatants of similar ranks and functions of those armed forces should also be excluded. It must then be decided whether these persons are motivated to take part in the hostilities essentially by the desire for private gain, and in this context, the possibility of religious or cultural motivation analysed.

61. Cases of dual and multiple nationality used simultaneously must also be studied.

62. The Special Rapporteur has brought his observations and request for clarification to the direct attention of the parties concerned so as to determine beyond doubt the presence of mercenaries in the former Yugoslavia as well as their responsibility in the crimes committed in express disregard and contempt for the norms of international humanitarian law. In this context it is of the greatest importance to include in this report the recent communications received from the Government of Croatia and the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) (see the addendum to this document). This document indicates the current state of affairs and the steps taken by the Special Rapporteur to ensure that a matter of the importance and gravity of the active presence of mercenaries in the armed conflicts taking place in the territory of the former Yugoslavia does not go unpunished.

V. CONCLUSIONS

63. The recruitment, use, financing and training of mercenaries to commit acts which violate the right of peoples to self-determination, the sovereignty of States, the constitutional stability of Governments and human rights has been condemned in various international instruments and resolutions of United Nations organs. Moreover, according to data compiled by this Rapporteur, many States have incorporated provisions for the punishment of mercenary activities into their domestic legislation.

64. According to the information compiled, categorised and analysed by the Special Rapporteur, mercenary activities are not confined to the individuals who commit the offence. While the latter are responsible for the execution of the unlawful act, the reality is that behind the recruitment of the mercenary and

the execution of his unlawful act, there is deliberation, planning, organization, financing and supervision involving third parties, who may be private groups, opposition political organizations, groups which preach national, ethnic or religious intolerance, clandestine organizations, paramilitary groups and even Governments which, through covert operations using mercenaries, engage in unlawful acts against another State or against the life, liberty, physical integrity and security of individuals. Responsibility for a mercenary act lies not only with the agent who committed the final phase of the offence but also with all those who individually or collectively participated in the unlawful activity of using mercenaries for the commission of an offence. All of this means that mercenary activity is by its very nature complex. In most cases, it does not originate from nor conclude with the act and responsibility of the individual deemed to be a mercenary. The possibility must always be examined that behind each act there might be concerted action involving public or private agents.

65. It is therefore of the utmost importance for Member States to be vigilant and to incorporate provisions for the control and prohibition of mercenary activities into their domestic legislation in order to prevent organizations which engage in mercenary activities from operating in their territories and, where applicable, to discontinue any intelligence arrangements which, through covert operations, countenance the recruitment of mercenaries by government agents or third parties, by providing severe penalties for such unlawful recruitment.

66. In addition to the general aspects referred to in the previous paragraph, the most common purposes for which mercenaries are recruited are to commit acts of sabotage against a third country; to carry out selective assassinations of eminent persons and to participate in armed conflicts. The conclusion therefore is that a mercenary is a criminal who, without prejudice to the punishment of those who recruited and paid him, must be severely punished, in accordance with the characterization of the offence under ordinary law, where national legislation contains no provision concerning the separate phenomenon of mercenary activity. In all cases, the status of mercenary must be considered an aggravating circumstance.

67. Mercenary activities are the object of universal condemnation, including in those States which have still not specifically characterized such activities as offences. The current stage of the debate concerns the scope and content of the punishable act, but not its criminal nature. Moreover, and without prejudice to the further development of international legal instruments and of the provisions of domestic legislation, Member States should strengthen their own capacity to formulate policies for the prevention, follow-up and punishment of mercenary activities. The aspect of prevention is crucial and should cover such questions as, for example, those relating to the free supply of labour in the recruitment of persons for unspecified activities. This is a very delicate issue which should be examined by each country in accordance with the characteristics of its constitutionally protected economic system. In any case, the presumed contradiction between constitutional and international norms does not exist. If mercenary activity is deemed to be an offence, it cannot be accepted as a manifestation of an open-market transaction.

68. Mercenaries are generally former members of the regular armed forces of a country who have participated in that capacity in military conflicts. In other words, their profession is to fight wars and they are sought after precisely for that reason. Viewed from this perspective, the fact that they become unemployed upon their repatriation and separation from the regular armed forces together with certain alterations in their personality as a result of war may lead them to become mercenaries. The current supply of mercenaries includes persons associated with the military profession whose personal situation has taken a turn for the worse because of reductions in troop strength or the dissolution of the regular armed corps to which they belonged, and to the unpaid debts which they incurred as a result.

69. Given the complexity of the phenomenon, situations exist which are outside the scope of mercenary activity, as currently defined by international law. There is a tendency towards an excessively general use of the term and it is applied in common parlance to any adversary who is presumed to engage in immoral conduct and to be attracted to ill-gotten money. A review of situations in which laws governing sovereignty and self-determination are involved, reveals the existence of elements which do not exactly fit the characterization of mercenary, even though other factors may be present: criminal conduct, pay, involvement in a conflict on behalf of a third party, and so on. Consequently, the characterization of mercenary is appropriate only where all the elements required for that purpose under current international laws are effectively, verifiably and concurrently present.

70. The Special Rapporteur has noted the existence of cases in which recourse is had to legal devices or, more specifically, to normal legal procedures for the purpose of concealing mercenary activity. A mercenary may thus be given the legal identity of a national of the country in whose armed conflict he is involved or in which he is to undertake his criminal mission, thereby avoiding the characterization of mercenary. Although the use of this recourse legally conceals an individual's real status as a mercenary, information such as the origin of the contractual relationship, the payment, the type of services arranged for and the simultaneous use of other nationalities and passports may serve as evidence in establishing the true status of persons who are justifiably suspected of engaging in mercenary activities.

71. Over the last three decades, a number of African countries have suffered from the activities of mercenaries. This is true of Angola, Benin, Botswana, the Comoros, Lesotho, Liberia, Mozambique, Namibia, Sudan, Zaire, Zambia, Zimbabwe, and others. In some cases, including outside of the region of southern Africa, attacks by mercenaries took place in response to the policy of apartheid which originated in South Africa but whose ramifications and criminal activities extended to other parts of Africa and even to places outside the continent. In most of these countries, it has been possible to put an end to armed conflicts, thereby paving the way for national reconciliation, peace and the transition to democracy, which, in turn, have brought an end to complaints about mercenary activities. Moreover, the democratic, multiracial and multi-party regime installed in South Africa is being consolidated, thus opening the door to a period of cooperation among the countries of southern Africa. All of this confirms that mercenary activities in that region were linked to the maintenance of the apartheid regime and to the continuation of armed conflicts.

In Liberia, Sudan and Zaire, however, where tensions and political struggles continue to provoke violence, reports continue to be received about mercenary activities.

72. The Special Rapporteur attaches great importance to the visits which he paid to the Republic of Croatia and to the Federal Republic of Yugoslavia (Serbia and Montenegro) in September 1994, in fulfilment of his mandate. However, as of the completion of this report, the delivery of a portion of the documentation offered by the Croatian authorities and by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) is still being awaited. While the Special Rapporteur therefore considers that he is not in possession of all the elements necessary to permit him to reach final conclusions, he nevertheless wishes to offer the following views as a working hypothesis.

73. With regard to complaints about the presence of mercenaries in Croatia, it would be necessary to exclude from this characterization foreigners who enlisted as regular and permanent members of the regular Croatian army and who receive pay that is less than or equal to that promised or paid to combatants of similar rank and functions in the regular armed forces of that country. Such persons should be considered volunteers, not mercenaries. A mercenary is a person who is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised material compensation substantially in excess of that promised or paid to combatants of similar rank and functions. Special consideration must be given to the case of foreigners who have enlisted in international brigades and the relationship between these brigades and the defence system of the State. It is necessary to ascertain whether they received or were promised remuneration, the amount of such remuneration and by whom it was promised or paid.

74. Account must also be taken of the issue of the mujahidin, or Islamic fighters who are alleged to be participating in the armed conflict taking place in the Republic of Bosnia and Herzegovina. In this case, an exception should be made for persons, such as officers or troops of the armed forces, who have been sent on official mission by States which are not parties to the armed conflict. Exception should also be made for foreigners who have enlisted as regular and permanent members of the armed forces of Bosnia and Herzegovina and who receive material compensation that is equal to or less than that promised or paid to combatants of similar rank and functions in the armed forces of that country. It must then be ascertained whether such persons are motivated to take part in the hostilities essentially by the desire for private gain and, in that context, the possibility that they might be motivated by religious or cultural factors must be considered. The factor of nationality, however, must always be taken into account.

75. As regards the current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur must report that to date only 8 States have completed the formalities required to become party to the Convention (Barbados, Cyprus, Georgia, Maldives, Seychelles, Suriname, Togo and Ukraine), while 13 others have signed it. Member States have thus been slow to indicate through ratification or accession their willingness to be bound by the Convention, which can enter into force only after 22 States have ratified or acceded to it.

VI. RECOMMENDATIONS

76. The Special Rapporteur, taking into account the United Nations declarations and resolutions condemning the activities of mercenaries as serious crimes which give all States cause for profound concern, recommends to the General Assembly that it should reaffirm its condemnation of mercenary activities of any type or form and at any level, and of States or third parties involved in them. He further stresses the need to strengthen the principles of the sovereignty, equality and independence of States, the self-determination of peoples, full respect for and enjoyment of human rights and the stability of constitutionally established and lawfully functioning Governments.

77. Bearing in mind that mercenary activities take place chiefly, but not exclusively, in the context of armed conflict, it is recommended that the General Assembly should stress that the use of mercenaries in itself and their use for unlawful activities are to be condemned, both in cases where such activities are carried out by one or all parties to an armed conflict and in cases where there is no armed conflict, and mercenaries are resorted to for purposes of impeding the self-determination of a people, damaging a country's installations, destabilizing the constitutional Government of a State or endangering the life, safety and human rights of its inhabitants.

78. Bearing in mind the nature, forms, contractual relationships and specific characteristics of mercenary activities, the Special Rapporteur suggests that the resolution condemning such activities should include a recommendation that Member States should establish, in their domestic legislation, an explicit prohibition to prevent organizations linked to mercenaries from operating in their territory and from engaging in any contractual activity relating to mercenaries or any propaganda, public promotional activity or justification on behalf of mercenaries. States should also prohibit their public authorities from resorting to mercenary activities, and counter any intelligence or security machinery which, through covert operations, uses mercenaries or does so through third organizations.

79. Given the oversupply of career military personnel who have lost their jobs as a result of cut-backs in the armed forces in many countries, and the possibility that they may become mercenaries, it is recommended that Member States should establish policies for the prevention of mercenary activities, involving the exchange of information and the provision of follow-up attention and care for these kinds of people who have developed a tendency towards aggressive behaviour. They could also implement a policy to promote employment and psycho-social care for people with problems resulting from their participation in warfare, and establish a legal framework for the activities of groups of former combatants to prevent them from going to extremes such as glorifying war, fostering intolerance or adopting ideologies which cultivate violence and military interventionism. States have an interest in preventing bands of mercenaries from assembling or operating within their territory, in enacting laws that criminalize mercenary activities and in taking legal action to suppress such activities. Where mercenaries are former members of the armed forces or the police, this should be considered an aggravating circumstance and the penalties should be more severe.

80. The prevention aspect is fundamental and should include such matters as, for example, the use of the open labour market in recruiting persons for unspecified activities. This topic should be examined by each country in accordance with the nature of its constitutionally protected economic system. If mercenary activities are considered a crime, it cannot be argued that it is permissible to use the open market to recruit mercenaries. Likewise, States have the capacity to prevent their territory from being used for the training, assembly or transit of mercenaries and to ensure that their financial and economic systems cannot be used to facilitate operations linked to such illicit activities.

81. There must be no attempt to justify mercenaries in the media nor any misconceptions regarding this type of criminal behaviour. National legislation should be very harsh on State services, such as intelligence or security services, or authorities with repressive proclivities or private totalitarian-minded associations which, resorting to markets where mercenaries are available, recruit individuals for the purpose of establishing praetorian guards, death squads or operational groups devoted to political repression or the assassination of political or religious adversaries.

82. States should enact measures such as the revocation of the operating licences and permits of entities that have hired or recruited mercenaries to carry out illicit activities, the refusal to grant passports or visas to mercenaries and the prohibition of their transit through national territory.

83. Bearing in mind that the elimination of the apartheid regime in South Africa and the installation of a democratic and multiracial regime in that country may favour the reduction of mercenary activities in Africa, it is recommended that all persons of foreign nationality who have served as mercenaries in armed conflicts or in support of apartheid, whether or not they have served sentences, should be expelled from African countries. At the same time, nationals who have participated in mercenary activities should be liable to provisions in the respective legal system of each country which establish penalties of the greatest severity for recidivism. It is also recommended that organizations which advocate violence should be legally dissolved and disarmed, the mercenaries in their service expelled and any offences investigated and penalized to ensure that these acts do not go unpunished.

84. The Special Rapporteur recommends that the authorities of the States which have emerged in the territory of the former Yugoslavia and are affected by armed conflicts should be asked to keep a detailed record of aliens entering their countries, particularly of those taking part in the hostilities. Indeed, it should be borne in mind that the presence of aliens in an irregular situation is a factor that has contributed to the escalation of the conflict, its complexity and the perpetration of cruel acts and violations of human rights which have mainly affected the civilian population.

85. It is recommended that the record should make a distinction between the following: (a) aliens who have been sent on official mission as members of their armed forces by States which are not parties to the conflict; (b) aliens of national origin who have joined the armed forces and who have been promised or paid material compensation similar to or less than that promised or paid to

combatants of equal ranks and functions in those armed forces; (c) aliens who are motivated to take part in the hostilities essentially by the desire for private gain, who have been specially recruited to fight and, in fact, have been promised material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions. In this last case, it is recommended that the competent authorities should conduct more detailed investigations of the entities or persons that recruit, train and pay these persons or may have done so in the past, and immediately arrest those falling into category (c) above, and either expel them from the country or prosecute them if they have committed acts which are considered offences under the law.

86. Lastly, with regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur recommends that the General Assembly should suggest to those States which have not yet ratified or acceded to it that they consider the advisability of speeding up this process, which will hasten its entry into force; this will promote more effective action by the international community for the prevention, prosecution and punishment of mercenary activities and contribute to the fulfilment of the purposes and principles enshrined in the Charter of the United Nations.

Notes

1/ E/CN.4/1995/29.